IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

OP.No. 4774 of 2003(R)

PETITIONER:

C.K.VELAYUDHAN, ASSISTANT SALES TAX OFFICER, THAMARASSERI SALES TAX CHECK POST, KOZHIKODE.

BY ADV. SRI.P.J.MATHEW,
SRI.THOMAS JOHN AMBOOKEN.

RESPONDENTS:
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1. **STATE OF KERALA, REP. BY SECRETARY TO GOVERNMENT TAXES (D) DEPARTMENT, THIRUVANANTHAPURAM.**
2. **JOINT COMMISSIONER-I, OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SMT. SMITHA SUKUMARAN.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 03/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 8974/2003 IN O.P. NO. 4774/2003

DISMISSED

03/07/2007. **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE MEMO OF CHARGES DTD. 29/03/2000 NO. A11-32263/98/TX.

EXT.P.2: COPY OF THE EXPLANATION GIVEN BY THE PETITIONER.

EXT.P.3: COPY OF THE ENQUIRY REPORT NO. KE 5-8802/2000.

EXT.P.4: COPY OF THE ORDER OF THE R.2. TO THE PETITIONER.

EXT.P.5: COPY OF THE APPEAL BEFORE THE R.1. DTD. 25/04/2001 FILED BY THE PETITIONER.

EXT.P.6: COPY OF THE JUDGMENT DTD. 17/07/2002 IN O.P. NO. 19801/2002 OF THE HON 'BLE HIGH COURT.

EXT.P.7: COPY OF THE ORDER G.O. (RT). NO. 640/2002/TD DTD. 13/11/2002.

EXT.P.8: COPY OF THE INVOICE DTD. 29/05/1998.

EXT.P.9: COPY OF THE AUTHORIZATION LETTER DTD. 10/05/1998.

EXT.P.10: COPY OF THE PURCHASE BILL ISSUED BY THE CHENKULATH CASHEW FACTORY DTD. 29/05/1998.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

Thottathil B. Radhakrishnan, J.

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O.P.No.4774 of 2003

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Dated this the 3rd day of July, 2007.

JUDGMENT

Petitioner, while working as the Sales Tax Inspector in the Azhiyoor Chungam check post, a lorry loaded with 10059 kilograms of raw cashewnut valued at above Rs.3,83,750/- passed during the night of 29-5-1998. The transported item was taxable at the last purchase point and belonged to an unregistered dealer. However, no security deposit was collected.

2. On the aforesaid facts, the petitioner was charge-sheeted on the ground that he colluded with the transporter and evaded imposition of security deposit and that there was ulterior motive for personal benefit. The State Government would have lost an amount of Rs.63,725/- by way of security deposit, owing to the actions and commissions

attributed to the petitioner. The resultant enquiry, following the cause shown by the petitioner to Ext.P1 memo of charges, led to Ext.P3 enquiry report in which it is stated that the goods, at the time of transport were having valid documents and liability regarding last purchase is a vexed question of facts and circumstances. It was noticed that there is no evidence to arrive at a conclusion that the action was ill motivated. However, the fact that the petitioner had not properly scrutinized the documents remained. The enquiry officer forwarded the files recommending that, on the basis of the findings, a lenient view has to be taken against the petitioner. This led to the penalty of barring of two increments with cumulative effect. In his appeal, the Government reduced it to barring of one increment with cumulative effect.

3. Petitioner has since retired from service.

4. Confining his submissions to the punishment imposed in terms of the appellate order, the learned counsel for the petitioner contended that barring of increment, even if it is only one, with cumulative effect, is a grossly disproportionate punishment, particularly when, the enquiry report candidly lays down that there were no bad intentions at all for the petitioner in the matter. He urged that the imposition of penalty could have been confined to not more than barring of an increment without cumulative effect.

5. Per contra, the learned Government Pleader argued that the matter of proportionality of punishment is not a question that would arise for decision in this case because, the punishment imposed cannot be treated as grossly disproportionate or shocking to judicial conscience and that therefore, the punishment may not be

interfered with.

6. The overall assessment of the totality of the facts emerging out the enquiry would show that the occurrence, on the basis of which the petitioner was charge-sheeted, was sometime late in the night. It related to transport of cashew through a check post. The petitioner was in control of the affairs of the check post. His explanation that certain instances involving some intelligence officials preceded the occurrence in question did not find favour with the authorities. As noticed by the enquiry officer, the fact remains that the vehicle with the goods was permitted to move without security deposit. The service in question relates to enforcement of fiscal legislations leading to the management of revenue. If it is assumed that loss could have resulted out of any act of the petitioner, even it were not negligent, the State Government could not be found

fault with for any action. The benefit that the petitioner obtained in the enquiry was the view of the enquiry officer that the question of the last purchase would remain a vexed issue. I noticed all these facts to consider whether the impugned order imposing the punishment of barring an increment with cumulative effect needs to be interfered with. The power to impose punishment is ultimately with the Government. The findings and procedure relating to the enquiry not being interfered with, the question is regarding the sustainability or otherwise of the punishment that has been imposed. In judging the proportionality, judicial review is no substitution for an executive appeal and in a judicial review process, it is impermissible to sit as if it is on an appeal. May be that, if I were to substitute myself as the head of the executive, I would have then considered the question of imposing the punishment as if I am the master of the servant, whose indiscipline or misbehaviour is

being considered. But, in the realm of judicial review, when the line between the impermissible and the permissible is so thin as it would not be discernible on a touchstone of either Article 14 or Article 16 or with reference to the binding statutory provisions, it is not permissible to substitute the wisdom of the court for the wisdom of the executive in matters relating to discipline, unless it is shown that the action taken is either perverse, unavailable on facts or that the punishment imposed is unreasonable or grossly disproportionate to the proved charges.

For the aforesaid reasons, this writ petition fails. It is hence dismissed.

Thottathil B.Radhakrishnan,
Judge.

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Thottathil B. Radhakrishnan, J.

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O.P.No.4774 of 2003

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JUDGMENT

Dated:3-7-2007